



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC - 8 2010

REPLY TO THE ATTENTION OF:

WW-16J

U.S. Army Corps of Engineers, Louisville District
James M. Townsend, Chief
Regulatory Branch
600 Dr. Martin Luther King Place
Louisville, Kentucky 40202

Re: Public Notice LRL-2010-576 /Vigo Coal Operating Company, Red Brush – West Mine

Dear Mr. Townsend:

The United States Environmental Protection Agency has reviewed the subject public notice issued on November 9, 2010. The applicant, Vigo Coal Operating Company (Vigo), proposes to impact "waters of the United States" in association with their surface mining operation at the Red Brush – West Mine (S-00349-2). The proposed project is located in Newburgh, Warrick County, Indiana. The proposed impacts are 2,733 linear feet of intermittent streams, 10.3 acres of wetlands, and 1.3 acres of open water. EPA reviewed the 404 Permit Application and other associated documents. We offer the following comments and questions based on our review:

Alternatives Analysis and Avoidance and Minimization

As you know, the 404 (b)(1) Guidelines (the Guidelines) require that the applicant demonstrate there are no practicable alternatives available that would have a less adverse impact on the aquatic environment for non-water dependant activities. The Guidelines presume that less damaging upland alternatives are available for these activities unless demonstrated otherwise by the applicant¹. The applicant must follow a sequence of steps to be in compliance with the Guidelines that include avoidance, minimization, and compensation for unavoidable impacts². The Operations Map included with the 404 application clearly depicts the coal processing facility located directly over stream 1AS1-1. Construction of a coal processing facility is not a water dependence activity. The applicant has not demonstrated through their alternatives analysis that there a no practicable alternatives to locating the facility in a stream channel. Additionally, the applicant must provide a similar demonstration of the practicability of alternatives for the

¹ 40 C.F.R § 230.10 (a)

² 40 C.F.R § 230.10 (d)

construction of a sediment basin in stream 1AS1, and reconfiguration of the overburden piles to avoid streams and wetlands just west of the forested portion of the site.

Mitigation

The wetland and stream mitigation ratios proposed are based on area and length. However, the wetland is proposed to be surrounded by row cropping and grazing lands with no buffers. The Corp should require an additional buffer of at least 25 feet on the wetland due to the intensity of the proposed surrounding land use of row cropping and agriculture³. EPA recommends that credit for the buffers should be calculated as a portion of the total acreage required but at a reduced rate of 10 percent. EPA does not support a reduction in the currently proposed mitigation because of the temporal loss of aquatic resource that will occur, the amount of time it takes a forested wetland to develop and the challenges associated with stream mitigation. In light of these factors, EPA recommends that the monitoring period be increased to 10 years⁴. The mitigation plan must also include ecological performance standards for the parameters measured. A simple statement about the stream assessment methodology does not address the requirement of Subpart J of the Guidelines to include ecological performance standards in the mitigation plan. The performance standards must be provided by the applicant and should be included within the special conditions of any permit issued by the Corps.

Cumulative Impacts Assessment

The cumulative impacts of mining in the immediate area are not addressed by the applicant within their analysis. The analysis only mentions mining impacts within the watershed. The applicant should include a discussion of cumulative impacts to aquatic resources, water chemistry and the biological community. Further, the discussion highlights, that the point at which the main tributary which drains the project site, reaches its confluence with Cypress Creek that Cypress Creek is no longer an impaired water according to the State of Indiana's 303 (d) list. Nevertheless, a portion of the Cypress Creek tributary system upstream is documented as being impaired, and the effects of impacting a tributary, that may be providing a dilution factor, which is allowing the impacts upstream of this confluence to recover could be deleterious. EPA expects the discussion to include information on how both the temporal and mitigation of waters on site will not cause or contribute a violation of a state water quality standards⁵.

In conclusion, EPA objects to the issuance of a permit for this project as proposed because it does not comply with the 404(b)(1) Guidelines. Additional information is needed to assess the project's impacts and determine if those impacts are appropriately mitigated. Please notify us of Vigo's response to the comments outlined above and any subsequent changes to the permit application. Thank you for the opportunity to provide



³ 40 C.F.R § 230.93(i), 33 C.F.R. § 332.3(i)

⁴ 40 C.F.R § 230.93(f)(2), 33 C.F.R. § 332.3 (f)(2)

⁵ 40 C.F.R. § 230.10 (b)(1)

comments on the public notice and permit documents. If you have any questions please contact Andrea Schaller at (312)866-0746.

Sincerely,


 Peter Swenson, Chief
Watersheds and Wetlands Branch

cc: Randy Braun
Section 401 WQC Section
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